IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12226 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GULBAHA @ GULAMHAR AHMEDDASHARPATHAN THRO BROTHER

Versus

COMMISSIONER OF POLICE

Appearance:

MS KRISHNA U MISHRA for Petitioner

MR UR BHATT, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 19/12/2000

ORAL JUDGEMENT

1. The petitioner has filed this petition under Article 226 of the Constitution challenging his detention order passed by the Police Commissioner, Baroda City on 16th March, 2000 in exercise of powers conferred upon him

under Sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA for short) and the petitioner came to be detained on 16th March, 2000 in pursuance of the above said order.

2. The detaining Authority took into consideration the investigation of 5 crimes registered against the petitioner and the statements of three witnesses who on assurance of anonymity offered their statements against the petitioner. From the above material, the detaining authority came to the conclusion that the petitioner was headstrong and hardened criminal and was indulged in committing offence of theft and house breaking. After considering other remedies, the detaining authority came to the conclusion that the petitioner was a "dangerous person" within the meaning of Section 2(c) of the PASA Act. Therefore, the impugned order was passed against the petitioner.

3. Learned Advocate Ms. Krishna Mishra for the petitioner and learned AGP Mr. Udai Bhatt for the respondents were heard.

4. Mainly the petition came to be challenged on the grounds that the detaining authority failed to consider less drastic remedy available to the detaining authority and therefore, the order passed was without application of mind, vitiating the detention of the petitioner. In ZUBEDABIBI RASIDKHAN PATHAN vs. STATE OF GUJARAT reported in 1995 (2) GLR 1134 and thereafter in LPA No. 1056 of 1999 in the case of YUNSUBHAI HASANBHAI CHANCHI vs. DISTRICT MAGISTRATE, decided on 15.9.1999, this Court has confirmed that the cancellation of bail u/s 437(5) of the Cr.P.C. was less drastic remedy available to the detaining authority which was not considered. This Court in both the above cases, quashed the order of detention for non-application of mind by the detaining authority on the above mentioned ground. In the present case also, the detaining authority without resorting to the less drastic remedy of cancellation of bail, has simply observed that the procedure for cancellation of bail was likely to take time and, therefore, the same has not been resorted to. Thus, without resorting to the less drastic remedy available to the detaining authority, the detaining authority has brushed aside this aspect of the case and, therefore, there is non-application of mind by the detaining authority towards the facts of the case. In this view of the matter, the order of detention is required to be quashed and set aside.

6. For the above said reasons, this petition is

allowed. The order passed by the Police Commissioner, Baroda City on 16th March, 2000 against the petitioner under the PASA Act is hereby ordered to be quashed and set aside. Petitioner - Gulbaha @ Gulamhar Ahmeddashar Pathan is ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair